

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CONTEMPT PETITION NO. 41 OF 2005

IN

NOTICE OF MOTION NO. 3099 OF 2004

IN

SUIT NO. 3031 OF 2004

MR. GULAM HAIDER S/O MUSTAQ HUSSAIN ..PETITIONER

VERSUS

GULAM GAUSE MUSTAQ HUSSAIN SHAIKH & Ors.Respondents

Mr. Bharat Vaishnbawa i/b. B.Vaishnawa & Co. for the
petitioner.

Mr. S.S.Joshi for Respondents 1 to 3.

CORAM: S.K.SHAH, J.

DATE : 21st October, 2005.

P.C.

1. Heard.

2. The petitioner had filed suit against the Respondents Nos. 1 and 2 for recovery of the amount equal to the share of the Respondent No.1 paid by the petitioner to the third party for getting the premises vacated. The petitioner and the Respondents Nos. 1

and 2 are the brothers. The shop premises was taken on lease by their father. The father has expired and therefore all the three brothers come to occupy the premises and business is run in the said premises.

3. In this suit, the injunction order was passed against Respondent No.1 restraining him from entering upon the suit premises and restraining him from obstructing or preventing the plaintiff or his employees or interfering with the plaintiff's carrying on the said business in the suit premises.

4. It is alleged that this order has been violated and the defendant No.1 has entered the premises. Further, it is alleged the Respondent No.3 who is the wife of Respondent No.2 and Respondent No.6 who are sisters have entered the premises and taken possession of the premises as agent of the Defendant No.1.

5. The Defendant No.1 has filed an affidavit stating that he has vacated the premises and he has also given an undertaking in the affidavit that he will not enter the premises till the order is enforced.

6. So far as Defendant nos. 2 to 6 are concerned, there is no order against them. The allegation that they acted as agent of the Defendant no.1 is not acceptable. There is also no evidence to show that

they acted as agent of Defendant No.1. In fact, the defendant No.2 has independent right in the business and consequently in the premises. Defendant No.3 is the wife of Defendant No.2 and defendants Nos. 4 to 6 being the sisters have interest in the premises. Therefore, there is no question of they acting as agent.

7 I do not find any merit in this Contempt Petition. The Contempt Petition stands disposed of.

(S.K.SHAH, J.)